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RESTRICTIONS UPON COMIC BOOKS

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RESTRICTIONS UPON COMIC BOOKS

Summary

1. The relationship between the reading of comic books and juvenile delinquency has been a hotly debated scientific and popular issue for a number of years. Those who believe that comic books are an important causative factor in juvenile delinquency have gained their point to a sufficient extent that a number of states have enacted legislation severely restricting the circulation of comic books, and a number of others have seriously considered such action. This bulletin examines these laws and proposals and explores their constitutional implications.

2. Statutes forbidding the distribution of "obscene" material exist widely, and it is generally conceded that these prohibitions may be constitutionally applied to "sexy" comic books in the same way that they are applied to out and out pornography. However, these laws are not deemed entirely adequate to meet the threat posed by objectionable comic books, for the reason that "obscenity" has been strictly equated with sexual impurity by the courts, whereas the evils ascribed to comic books are not limited to their effects on sexual mores and conduct.

3. The constitutionality of other statutes of relatively long standing, not specifically directed at comic books but possibly applicable to them, such as laws penalizing the distribution of publications prominently featuring crime and violence, has become at best very doubtful as a result of the United States Supreme Court's decision in the 1948 case of Winters v. New York.

4. Acting under the double stimulus of this decision and of vociferous objections to many comic books, 12 states have enacted laws which ban the distribution either to minors or entirely, of comic books considered objectionable, while attempting to describe these publications in such detail, both as to their physical form and their contents, that no one can mistake what is intended or argue that the bar to circulation extends to expressions entitled to constitutional protection. An Illinois measure of this type was vetoed by Governor Stratton in 1955. The gubernatorial veto was based on constitutional objections which may well apply to the laws on the subject that have reached the statute books in other states.

5. Five of the states with laws thus inhibiting the distribution of comic books also forbid the "tie-in-sale" practice whereby wholesalers pressure retailers into handling the objectionable publications. Illinois and three other states not otherwise specifically restricting the sale or distribution of comic books have adopted this anti tie-in-provision.

6. Another method of combatting allegedly harmful comic books is semi-official administrative action by the police or prosecuting attorneys, or both. The essentials of this device are the blacklisting of certain publications and actual or implied threats to prosecute under the anti-obscenity statutes distributors who per-

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sist in handling the materials so classified. Even less formal pressure action by citizen groups also exists.

7. The anti-obscenity statutes have generally been sustained as to constitionality but their application to particular publications has been circumscribed by decisions requiring that the dominant theme of a book, its probable audience, its value as a literary or scientific work, the amount of clear and present danger its circulation can be shown to entail, and the prevailing moral standards of the community all be considered. These rules can mean inapplicability of the laws to books, having a concealed sex emphasis, and the laws themselves have no relevance at all to comic books thought to be harmful on other than sexual grounds.

8. In voiding the New York statute penalizing the distribution of publications featuring accounts of crime and lustful and bloody deeds so massed as to incite their readers to crimes against the person, the United States Supreme Court said that such legislation had to meet due process requirements by describing the offending publications so clearly that every person of normal intelligence would understand what was forbidden to be distributed, and also had to safeguard the freedom of expression guaranteed by the First and Fourteenth Amendments to the federal constitution by employing terms that would clearly preclude from the law's application publications protected by those same guarantees.

9. If it can be established that trashy comic books of the kind so often seen on the newsstands and magazine racks today lack sufficient intrinsic value to entitle them to the full constitutional protection and, further, that a reasonable man might conclude they represent a social menace; the great problem remaining for the advocates of restrictive legislation in their regard is to find "apt" words to describe such publications fully enough to meet due process requirements of criminal procedure and to distinguish them clearly from publications that merit full constitutional protection. Recent judicial utterances make it very doubtful that these requirements can be met by simply delineating with great particularity the format and contents of the comic books in question. As a further safeguard against a ruling of invalidity on the score of vagueness, future legislation may also have to include a provision imposing criminal responsibility only if a publisher or distributor acts with specific intent to cause immorality or incite crime, or with a reckless disregard of a formal legislative finding, expressed in the statute, that his act of publication or distribution will probably involve those consequences. There is no assurance, however, under current court decisions that even this approach would supply a constitutional basis for the limiting legislation.

RESTRICTIONS UPON COMIC BOOKS

The growth to mammoth proportions of the so-called "comic book" industry, issuing publications resembling magazines in their external appearance and consisting internally of admixtures of pictures, drawings, dialogues and stories dealing with crime, horror and sex, has been accompanied by protests that the "literature" is undesirable and makes positive contributions to juvenile delinquency. This has been the primary basis for various official and unofficial actions designed to eliminate or confine the claimed nuisance.

The passage of some restrictive legislation and the serious consideration of much more raises practical and constitutional problems of the first magnitude. There is, in the first place, the question of how to separate the truly objectionable items from those that are unoffensive or at least not provably harmful. Secondly, the restrictive measures must be reconciled with constitutional guarantees of freedom of the press, so that there is no impingement upon bans against censorship designed to protect freedom of thought. It is the purpose of this bulletin to explore these problems in some detail.

Comic Books and Juvenile Delinquency

While there are some indications that the circulation of comic books has fallen off somewhat during the last year or so, the enterprise is still very much in the realm of big business. The continuity of demand for such publications would seem to be ample testimony to the possibility of financial profits in meeting that demand, though this does not necessarily mean that the product as a whole is a useful one. Certainly, some of the publications are, by most standards to be deemed quite offensive, others are no more than undesirable, and still others have varying degrees of positive good in them. The same format that is used by the worst type of crime comics can be and is also used to teach religious themes. All of this is part of the background of the problem, even if one isolates the issue at hand from the related problems of undesirable content in hard-cover books, movies, television, and other instrumentalities of mass communication.

Few seem inclined to dissent from the view that comic books as a whole are devoid of literary value, being poorly written and routinely illustrated. The themes, adventures of one kind or another and fantasy, are for the most part conceived and executed without the imaginative power and artistry that characterize the great fairy tales and other children's classics of world literature. Yet, there is at least a superficial entertainment value, particularly appealing to children but also to some adults.

More controversy exists as to whether the known facts show that comic books contribute significantly to juvenile delinquency. Here there are four major schools of thought: (1) some argue that comic books are definitely and incontrovertibly a

very important cause of juvenile delinquency; (2) some say the books are unquestionably a factor but that the judgment of the first school as to their weight is exaggerated; (3) others feel that all the research undertaken thus far has failed to furnish conclusive or even suggestive evidence that there is a direct causal relationship between comic books and juvenile delinquency, at least except in unusual instances, and (4) there is the view that far from being an evil influence, comic books on the whole are actually an influence for good, since they provide a vicarious vent for the drives to adventure and thrills possessed by all children. Each line seems to have its adherents among psychologists, psycho-analysts, sociologists, child care experts and the like. The publishers of comic books tend to club together under the fourth standard; parents probably tend to accept one of the two intermediate positions.

Undoubtedly the best known and most vocal champion enrolled in the unequivocally hostile faction is Dr. Fredric Wertham, author of an impassioned book on the issue.[1] The ultimate ground of his indictment, as outlined in this volume, is that comic books are a nauseous compound of violence, sadism, and cruelty. The links in Dr. Wertham's chain of logic hang together in somewhat the following fashion; comic books foster picture reading, or the trick of gazing at successive pictures with a minimal reading of printed letters; picture reading increases the reading difficulties of children; there is a clear correlation between reading difficulties and delinquency. In addition, he argues, comic books describe by word and picture every type of crime, hence serve as blueprints for wrongdoing and social outrage and, in sex matters, have a stimulation that is invariably in wrong and even repulsive directions.

The considerably milder judgments of the second school are well represented by Miss Katherine Lenroot, longtime Chief of the Children's Bureau in the old Federal Security Agency. Miss Lenroot is far from denying that comic books may exert a deleterious influence, but doubts that they are particularly harmful in themselves or considered in isolation from the many other influences that are thought to play a part in the production of juvenile delinquency. In her view, the justifiable complaint against comic books is that they give children already disposed by other environmental factors to take the wrong turn an additional impetus.[2]

A member of the third camp, one Phillippe Bauchard, avers that the idea of a clear connection between comic books and juvenile delinquency is nothing more than a preconceived prejudice, unsupported by evidence. He claims that if psychologists and psychiatrists are honest, they are forced to admit they know almost nothing about what directly motivates the child. He calls upon the pedagogical and psychology departments of our universities, or failing them, public authorities generally, to undertake the preliminary research needed to give us some insight into the way children react in various circumstances and under various stimuli.[3]

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1. Fredric Wertham, Seduction of the Innocent (1953).
2. Report of the New York State Joint Legislative Committee to Study the Publication of Comics (Legislative Document No. 37, 1954), p. 8.
3. Phillippe Bauchard, The Child Audience (1952), pp. 13 and 14.

In the fourth group, the members of which are apparently the only ones who can bring themselves to say anything positively kind about comic books, the chief points made are that these publications are harmless outlets for the child's excess energy, channelling aggressiveness into an innocuous Never Never Land until such time as his reason has developed sufficiently to teach him that he must live in harmony with his fellows; that comic books point up the evil consequences of crime and general immorality; and that such of these pamphlets as purport to be copies or imitations or sugar coated versions of literary classics or serious subjects may actually induce a child to read the originals at a later stage in his education.

The debate briefly summarized above originated in the contents of comic books. It does not seem necessary to indicate these contents in any detail, since the general public has by this time doubtless acquired some degree of familiarity with them. There seems to be a large measure of agreement that the publications in question do, with considerable frequency, display rather prominently the activities of thoroughly reprehensible human types, stress the more obvious sex motivations by way of pictures, words, and innuendo, and feature methods of righting wrongs and bringing malefactors to an accounting that are difficult to square with any recognizable ideal of due process of law.

Constitutional Issues

The prominence which issues of constitutionality occupy in relation to limitations upon the circulation among children of undesirable publications has already been suggested. Drawing conclusions as to how offensive comic books and the like are, and the extent to which in fact they do motivate toward juvenile delinquency, are necessary preliminaries to determining whether legislative action is called for, but specific proposals for remedial action can hardly be drafted or intelligently considered without an awareness of what is and is not permissible by way of legislative ban. The fact that many niceties of judicial thought are involved complicates the subject but does not lessen its importance.

The constitutional provisions here involved are general principles incorporated in the federal and state constitutions for the protection of the liberties of all persons, and do not deal with particular age groups or particular types of publications. Predominant among these is the guarantee of freedom of the press. Also involved very directly is the due process of law rule that laws defining criminal acts must, in addition to meeting other tests, be sufficiently specific to indicate just what course of conduct is prohibited and thus to serve proper notice. Well-intentioned efforts to protect children against offensive publications and material inspiring them in undesirable directions must bear these substantive and procedural elements in mind to overcome opposition debate in the legislature, to obtain gubernatorial approval, and to survive court tests if they do reach the statute books.

While there is the possibility that public interest in the morals of children is sufficient to make some measures limited to publications appealing to children

Recognition of the fact that freedom of the press by no means precludes freedom from censure or punishment when the right is abused by the violation of penal laws constitutionally defined may be illustrated by the body of law seeking to prohibit publication and distribution of obscene materials. An early Massachusetts case, building on doctrine in Blackstone's commentaries on English law, made it clear that obscene libel was a common law offense for which a man might be punished after publication without the punishment doing any violence to constitutional guarantees. [5]

With that established, it is understandable that there now exists a proliferation of statutes in the United States supplementing the common law and providing punishments for the publication of obscene items even when no libel is involved. Something of a benchmark here, if another reference to English jurisprudence is permitted, was the general test of what constituted obscene publications as laid down in Regina v. Hicklin:

> I think the test of obscenity is this; whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. [6]

In different situations and places this definition has undergone both extensions and restrictions, chiefly in recognition of the logic that while almost any publication might have an adverse effect on those who were peculiarly susceptible, the test probably ought to be the material's effect on a more normal audience or in the light of its probable audience. [7] Also, instead of judging on the basis of some isolated word or phrase, the test became the dominant theme of the publication, the work as a whole, or its general effect. [8]

Problems of Definition

The feature that differentiates obscene materials sufficiently to authorize seizure and punishment even in advance of any public distribution is their tendency to corrupt the sexual mores of the community. Protection of public morals is, of course, a legitimate interest of government, but this does not mean that in the guise of such protection there can be suppressions of items that are not in fact obscene or punishments that are arrived at in violation of acceptable procedures.

In connection with bans on obscene materials, there is the fortuitous circumstance that the very word "obscene" or its synonyms is regarded by the courts as having a sufficiently definite meaning to lay down a standard of interpretation. Thus,

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5. Commonwealth v. Holmes, 17 Mass. 336 (1821).
6. Law Reports, 3 Queen's Bench 360 (1868).
7. People v. Larsen, 5 N. Y. S. 2d 55 (1938).
8. U. S. v. One Book Entitled "Ulysses," 72 Fed. 2d 705 (1938).

while in a particular case there can be argument as to whether the item involved is in fact obscene, this is only because one is comparing a specific thing with a general definition. The underlying rule is deemed to meet all the requirements of a definite standard to guide the trier of the facts. If the judge--or jury--makes an error, his action will be reversed on appeal but the validity of the standard is unaffected.

Even administration of bans against obscenity can become quite entangled in constitutional considerations where something more than pure smut is at hand. Some courts assert that the task of ascertaining whether a given publication reflects and gives encouragement to a lower standard of sexual conduct that is safe to tolerate belongs solely to a jury, using as its yardstick its own estimate of the prevailing standard of the time and place, and that the author's purpose and the quality of his work as literature are irrelevant in this connection.[9] Other courts have deemed the testimony of recognized literary critics as to an author's merits and intentions as a writer sufficiently relevant to be at least admissible under proper instructions as to the weight to be given such background elements.[10]

Another complexity in the administration of obscenity laws relates to the status of recognized classics, some of which in their unexpurgated form can be quite erotic. Suffice it to say, however, that here there operates what has been referred to as a sort of statute of limitations to create an escape from punishment supplemental to the rule that one is to judge a publication by its general effect and not by slight or infrequent sex passages which are related to the artistic purpose being served.[11]

What, however, can be said about a commonly understood and generally accepted definition of the types of comic and horror books that ought not to circulate among children? If they do in fact violate the standards laid down by the obscenity laws, the further problems are those of enforcement merely. If, however, they are offensive without being actually obscene, the standards become even more subjective and difficulties of placing them, objectively, in a statute laying down a rule of conduct are likely to involve the danger, at one end, that the standard will be too vague and, at the other, the peril of infringing upon rights to publish that government cannot validly restrict.

Thus, when those who do not think the general anti-obscenity statutes are a sufficient answer to the comic book problem set about the task of drafting tighter forms of regulatory legislation, they discover that their constitutional difficulties multiply. The reason for this is not far to seek; it stems from what has been termed the comic book industry's "case of main reliance," Winters v. New York,[12] the only litigation thus far in which anti-comic book legislation other than the anti-obscenity statutes has received a test before the Supreme Court of the United States.

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9. Commonwealth v. Eisenstadt, 318 Mass. 543 (1945).
10. People v. Viking Press, 264 N. Y. S. 534 (1933).
11. Cf. Commonwealth v. Gordon, 66 Pa. D. and C. 101 (1949) and Commonwealth v. Feigenbaum, 166 Pa. Super. 120 (1950).
12. 333 U. S. 507 (1948).

The statute involved in the Winters case was not an anti comic-book law as such, but an enactment amplifying the general anti-obscenity statute by prohibiting the distribution of certain material principally dealing with criminal news, police reports, or stories or pictures of deeds of bloodshed, lust, or crime. Illinois has a quite similar law, never fully tested in the courts, which bans circulation of the prescribed items among minors only, whereas the New York enactment forbade all distribution. Such legislation is on the books in a number of jurisdictions, sometimes in all inclusive terms as in New York, more often perhaps with the Illinois limitation attached. Though not enacted in direct response to the comic book stimulus, this body of legislation resembles specifically anti comic-book prohibitions in that it reflects government hostility to undue emphasis of crime, brutality and violence as well as sex.

A violation of the statute brought a conviction in the lower courts of New York that was sustained on appeal to the state's highest court but was ultimately reversed by the national Supreme Court, with the statute being declared invalid. The favorable holding of the state courts was based on acceptance of an interpretation that the legislature had intended to reach publications that so massed their collection of stories of bloodshed as to incite crimes against the person. Publications of this nature were deemed within the competence of the legislature to prohibit as representing a social harmfulness distinguishable from but parallel to the evils involved in sexual obscenity. The spokesman for the New York tribunal, Judge Loughran, felt that the statute did not conflict with the freedom of expression test because the evil it sought to prevent was one reasonable men might fear and its prevention had a value far outweighing any the publication might possibly be conceived to have. He also thought that the statutes gave adequate notice of what was prohibited.

The Supreme Court of the United States took a different view, reversing the decision by a six to three vote. The majority spokesman, Justice Reed, set up a pair of guideposts he thought controlling. The first of these was to the effect that the failure of a statute limiting freedom of expression to give fair notice of what acts will be punished, and such a statute's inclusion of prohibitions against expressions that are protected by the First Amendment violates an accused's rights to procedural due process of law and infringes upon the freedoms of speech and press. The second was that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents clearly within the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. By the second statement Justice Reed probably meant to indicate that the reasonableness of a legislature's conclusion as to the existence of an evil that ought to be prevented cannot save a statute that is so broadly drawn as to prohibit legitimate expressions along with those that may validly be punished.

Measuring the New York statute with his guiding principles in mind, Justice Reed asserted that, even as interpreted by the New York Court of Appeals, the specification of the offense was unconstitutional because vague and indefinite. Because the legislation did not draw a clear line between allowable and forbidden publications, publishers, distributors, juries and courts had no sure way of telling

what would violate it and what would not. In many cases the question would turn on purely personal and subjective considerations. Justice Reed was at pains to make it clear that he did not mean to say a state might not punish the circulation of objectionable printed material, assuming that the same was not protected by the First Amendment and was described by the legislation in "apt" words. He instanced New York's general anti-obscenity statute as a law that met his test because it used apt descriptions of the material it affected.

The dissenting opinion of Justice Frankfurter was a vigorous one, having as its main point the argument that the majority had unwarrantably substituted its own judgment for that of the New York legislature by erecting an abstract standard of "definiteness" and then holding that the statute in question was not sufficiently definite. In practical effect, had the minority view prevailed, the New York statute would have been sustained as a valid general approach to a serious problem, with subsequent litigation in individual cases being decisive as to whether the particular item distributed had a nature and effect that allowed it to be prescribed under the U. S. Constitution and the statute. The minority specifically recognized that harmless futilities could not be defined as a positive menace and their distribution punished.

On the whole, then, the litigation in the Winters case is to be regarded as not completely closing the door upon anti comic-book legislation but as placing some well nigh insurmountable obstacles in its path by insisting upon a definition that served clear notice as to what types of publications might not be distributed and did so in a manner that excluded substantially all possibility of legitimate items falling within the definition. The dilemma this poses for legislators is obvious.

One of the first attempts to face up to the problem of how to meet the specifications was made by the Los Angeles County Board of Supervisors, but its efforts were found unconstitutional in the intermediate state courts and no further appeal seems to have been taken.[13] The ordinance is of interest, however, in that through "whereas" clauses and in the ordinance proper there was an attempt to identify the punishable act as distribution to minors of illustrated magazines and the like prominently featuring named crimes, accompanied by findings and declarations that children were impressionable and were often stimulated by such publications to commit crimes while the possibility that harmless publications would be within the ban was a remote and negligible consequence. As will be noted later, at least one state (Maryland) has since acted along the same lines.

An attempt at legislation in this area during the 1955 session of the Illinois General Assembly, vetoed by the Governor on the advice of the Attorney General,[14]

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13. For the text of the Los Angeles County Ordinance and the commentary upon which the discussion in the text is based, see Charles S. Rhyne, "Comic Books--Municipal Control of Sale and Distribution--a Preliminary Study," National Institute of Municipal Law Officers (Report No. 124, 1948), pp. 12ff.
14. Veto Messages of Governor William G. Stratton (1955), pp. 110ff.

took somewhat substantially the same approaches in an effort to meet the doctrine of the Winters case. The measure (House Bill 754) declared that:

> The sale and furnishing to persons under the age of eighteen years of books, pamphlets, magazines, comic books or other publications primarily devoted to crime, sex, horror, terror, brutality, violence, passion, depravity, lust and immorality are found to be a contributing factor to juvenile crime, a basic factor in impairing the ethical and moral development of our youth and a clear and present danger to the people of this state.

It continued to provide punishment for those who willfully or knowingly made available to such children publications primarily devoted to matter of an indecent character or to horror, terror, brutality, violence, passion, depravity, or immorality. One section made it clear that publications in which the text was not prominent and was only incidental to pictures were included, and the intent may have been to exclude those where the reverse was true but, if so, this was not stated. As it passed the General Assembly, the bill did not differ greatly from the form in which it was introduced, though everything after the enacting clause had been restated by amendment.

The Attorney General's opinion was founded on interpreting the exact point of the Winters case as a holding that the New York statute was so vaguely worded as to violate the requirement of procedural due process of law that there be an adequately clear indication from a statute as to what was prohibited. Bearing in mind the importance of not infringing upon liberty of expression, he pointed out that the bill as worded could be construed to include within its prohibitions many literary classics dealing with delinquency, crimes and horror. If these were not in fact included within the prohibition, then the definition was deemed unconstitutionally vague; if they were, then the bill was invalid as abridging basic rights to print and circulate material that is either harmless or that at least has a value offsetting undesirable features.

The absence of any final judicial tests of anti comic-book laws seeking to meet the doctrine of the Winters case means, inevitably, a continued problem of speculation about ultimate holdings. It may be that a re-drafting of House Bill 754 to relate the format and likelihood of improper motivation more closely to the language stating the general content of the publications proposed to be banned would minimize dangers of infringement upon ordinary liberties of expression and thus meet the test of constitutionality. On the other hand, much more legislative action and judicial review may be needed before the nature of constitutionally permissible bans on undesirable publications dealing with crime and the like has been made even as clear as the law regarding obscene publications.

Other Legal Problems

In contrast with the problem of finding a definition that at once meets evalua-

tions of what the situation calls for and that passes judicial scrutiny, other aspects of comic book control have readily understandable benchmarks. For one thing, it seems clear that legislatures may contribute to a solution of some of the evils by eliminating claims that publishing practices are such that the magazine seller is practically compelled to sell distasteful items. At one time it was commonly said that many a seller displayed the undesirable items only because his agreements with distributors required that he accept items he might prefer not to handle if he desired to be the local outlet for the most popular goods channeled through that distributor. In response to the argument that this meant the availability on newsstands of some of the objectionable booklets, Illinois enacted a statute banning tie-in sales, which became law last year.[15] The prohibition here is only upon it being made a condition of obtaining desired stocks that the dealer also accept obscene publications, but the language could be expanded to ban additional types of tie-in sales. At least, there does not seem to be any serious disposition to challenge the authority of the states to enact such legislation as part of their fair trade and anti-trust policies, and some feel that such legislation coupled with informal action by local citizen groups and police forces eliminate the worst types of children's "literature" from the newsstands.

The matter of proper punishment for violations is similarly lacking in legal complexities. Within the general rule against cruel or excessive punishment, there can be the ordinary criminal penalties plus injunctive action against continued violations.

Routine enforcement of the bans, bringing offenders to justice, may not be a particularly easy matter, but where the violation is clear-cut problems should not be considerable.

Constitutional issues do, however, once more become critical if there is an attempt at "preventative" enforcement through some form of licensing or censorship. Even as to the movie industry, which was for long considered an entertainment enterprise not protected by constitutional guarantees of freedom of the press, it seems that prior restraint in the form of government censorship has little chance of being upheld when questioned in the courts. The latest pronouncement on this subject by the U. S. Supreme Court held invalid a Kansas act setting up a board of review to examine motion pictures and to disapprove such as were "cruel, obscene, indecent, immoral or such as to debase or corrupt morals."[16]

Registration or licensing, even without censorship being specifically mentioned, would ordinarily also seem to be constitutionally defective since at least the innuendo of prior permission is involved. As a result of the labors of a Senate committee created during the 1947 Illinois General Assembly, that body once considered the adoption of licensing on a statewide basis to combat undesirable

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15. Ill. Rev. Stat. (1955), ch. 38, sec. 472a.
16. Holmby Productions Inc. v. Vaughn, 350 U. S. 870 (1955), rehearing denied in 350 U. S. 920 (1955), and cases cited therein.

publications. The committee's investigation of the sources of lewd and obscene publications, and of the need for remedial legislation, led to it advocate that a license from the Department of Registration and Education be required of all distributors and publishers of books, periodicals, and magazines, and that a commission of three be formed to pass upon complaints against obscene literature, the commission being given power to recommend license revocation in appropriate cases. The constitutional problem so posed, and the indications given by reputable publishers that a dangerous precedent was involved, caused the measure (Senate Bill 612 of the 1947 session) to be stricken from the calendar.

A more current instance of frowning upon proposed legislation that implies censorship is to be found in the veto of House Bill 152 of the 1955 session. The measure proposed to give county boards a power, similar to that long possessed by cities and villages, to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations. The veto was based squarely on the assumed unconstitutionality of banning the sale of publications, but it at least seems significant that the language proposed to be added to the statutes was scheduled to go into a section dealing with licensing of various activities.[17] In any event, the almost identical power of municipalities--not, however, related in any way to licensing--seems generally accepted as valid.

Semi-Official Regulation and Constitutional Rights

Semi-official and even fully voluntary action to eliminate from the newsstands materials deemed undesirable for children frequently makes itself evident both by way of supplementing fully authorized action and by way of meeting a void where official action has not been authorized or where the authorization has been invalidated. Where at all aggressive, these efforts meet with considerable success, partly because local dealers have a desire to cooperate with public authorities and publicly spirited citizens and partly because there is at least an implied "mailed fist" in the form of economic and other pressures. Much the same is true of action from within the industry itself in the form of a Comic Book Code with an administrator selected by an association formed by a number of the publishers.

These activities, referred to again at a later point, do not eliminate all issues of constitutionality and, in fact, may pose their own threats to constitutionally protected rights. To the extent that the censorship and pressures are at all traceable to officialdom, a well formulated legal action would bring about the same results as if there were some specific statute or ordinance under consideration. Thus, although a court of equity will not as a general rule interfere with the enforcement of the criminal law, there are recent cases holding that such a court will step in to protect property and constitutional rights against a police officer whose methods of securing compliance with the anti-obscenity statutes obviously exceed his authority.[18]

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17. Veto Messages of Governor William G. Stratton (1955), p. 68.
18. E. g., New American Library of World Literature v. Allen, 114 Fed. Supp. 823 (1953) and Bantam Books v. Melko, 96 A. 2d 47 (New Jersey, 1953).

The principle would seem applicable to over zealous attempts to act under other purported authority, specific or general. Injunctions or damage suits may conceivably also be the lot of private groups who marshal forces out of well-intentioned motives but with excessive zeal and to the injury of property or other rights in the publications whose circulation is curtailed.

On the whole, however, "cooperative" efforts of the type under discussion have a tolerated and generally recognized value, so long as personal, subjective, and arbitrary criteria are kept at a minimum. Where the standards are so identifiable, the threat to personal freedom is great since the cloak of informality may foreclose the ordinary channels of relief through the courts while meaning as great an interference with rights of expression as though governmental action were involved. It is, accordingly, concluded by some that reasonable regulation by public authorities presents a solution that involves less of a threat to basic liberties than citizen action which may be just as forceful and treat items that are merely in bad taste or otherwise personally offensive on the same plane as items that are in fact obscene or otherwise validly subject to a legal ban.

Existing Restrictions on Comic Books

The belief that newsstands and similar sources make accessible to children much material in the form of so-called comic books that they would, at least, be better off for not reading it is national in its proportions. During 1955 almost every legislature that met saw prohibitory bills introduced, with enactments resulting in some cases. In addition, it should be kept in mind that older laws, mostly those dealing with obscene materials, are also in existence and that the Drafting Committee of State Officials, working as part of the Council of State Governments, has been giving attention to the problem and may well have a draft bill available by the end of 1956 that could be used as a pattern by those seeking legislation on the subject in a particular state.[19]

The methods used to restrict comic books thus far fall into three main divisions. There are, first of all, the anti-obscenity statutes universally or almost universally adopted many years ago and still in force almost everywhere. These are primarily directed against unabashed pornography or against serious literature and other forms of expression thought to be too heavily flavored with pornography. The typical anti-obscenity statute bans the distribution of such material. This body of general enactments antedates the comic book issue, and its use was naturally the first remedy that occurred to the opponents of comic books.

Then there are the statutes reaching material considered improper, not so much because of obscenity, but because of an over supply of themes of illicit sex

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19. Council of State Governments, Suggested State Legislation, Program for 1956 (1955), p. 64.

crime and violence. This type of legislation usually bans distribution to minors without attempting to limit adult materials. It is not quite as old or as widespread as the anti-obscenity statutes, but it, too, preceded the appearance of the modern comic book. Because of doubts cast on the constitutionality of this sort of legislation by a leading federal case, already discussed, the laws in a number of states have been rewritten within the past two or three years in an effort to avoid constitutional objections. In some instances the new legislation is so cast as to be pointed specifically at the admixture of pictorial and text content that identifies comic books. These newer laws are frequently accompanied by statutory attempts to prevent retail distributors of reading matter from being coerced by their suppliers to handle comic books of the racy variety.

The third form of restriction consists of the semi-official administrative action by police departments and prosecuting attorneys, which commonly takes the form of demands or strong requests that questionable material be removed from circulation, with threats of prosecution under the anti-obscenity statutes or other laws held in reserve. The officials concerned are sometimes urged into these campaigns and helped to determine just what is questionable material by informally organized citizens' groups. This development also arose before comic books began to appear in great numbers.

General Anti-Obscenity Statutes

The ultimate common idea behind the mass of general anti-obscenity legislation is the conviction--previously referred to--that "obscene" expression, whether it assumes the form of writing, speech, drawing or what not, should in the public interest be eliminated, for the reason that such expression encourages immoral thought and action. While the chief interest may be the protection of those who have an extra claim upon society's protective apparatus, the young and the emotionally and intellectually immature, these laws have a general application in recognition of the fact that the sex drive is probably the most powerful motive to human disorder.

The key adjective in every existing statute of this nature is the word "obscene." In a few that is the only adjective used.[20] Most legislatures, however, have sought to sharpen the meaning and intent of their statutes by the addition of synonyms such as "lewd," "lascivious," "indecent," "filthy," and "disgusting."[21] Only in Georgia and New Hampshire have statutory definitions of the term "obscenity" itself been framed.[22] These differences are not too important in view of the fact

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20. Fla. Stat. (1953), sec. 847.01; Tenn. Code Ann. (1955), sec. 1190; W. Va. Code Ann. (1949), sec. 6066; Wis. Stat. (1953), sec. 351.38.

21. E.g., New York and Pennsylvania use "obscene, lewd, lascivious, filthy, and disgusting." Utah uses "Obscene, lewd, lascivious, filthy, indecent, disgusting, and impure." [N. Y. Cons. Laws Service (Penal Law, 1955), sec. 1141; Purdon's Pa. Stat. (1955), sec. 18.4524; Utah Code Ann. (1953), sec. 76--39--1.]

22. Ga. Code Ann. (1953), secs. 23-6301a; N. H. Laws (1953), c. 233. In New Hampshire an obscene book is declared to be one "whose main theme or a notable part of which tends to impair or to corrupt, or to deprave the moral behavior of anyone viewing or reading it."

that the courts have ruled all these expressions have an identifiable meaning and come to the same thing--sexual impurity in some form. Insofar as federal jurisdiction extends to this sort of material, as in postal regulations or in rules governing imports, the obscene also means the sexually impure.

The basic Illinois anti-obscenity statute mentions obscene and indecent books, pamphlets, papers, drawings, lithographs, engravings, daguerreotypes, photographs, stereoscopic pictures, models, casts, and instruments, and, also, articles of indecent or immoral use. It prohibits under penalty of fine or imprisonment the possession, importation into the state, sale, gift, or advertisement or notification of the availability of these things, or their deposit in a post office or other mailing facility or with a common carrier.[23] Apart from more or less unimportant variations in the use of adjectives and the enumeration of things and activities affected by the prohibition, this act is a faithful replica of its counterparts in other states.

At the local level in Illinois, municipal authorities have the benefit of an enabling act giving them power to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures, or illustrations.[24] A standard example of a municipal ordinance enacted under this authorization is Chicago's prohibition of the exhibition, sale, circulation, or distribution of indecent or lewd books, pictures or other things of an immoral or scandalous nature.[25] Similar authorizations exist in most if not all the other states, and numerous local governments have availed themselves of the same. An ordinance in the Chicago form is the device most often adopted locally, but there are other varieties. Thus, a Lynchburg, Virginia ordinance lists 43 publications by name and specifically pronounces them "obscene" within the meaning of the prohibition; Lansing, Michigan has a licensing ordinance; official censorship boards or literary commissions have at one time or another been constituted by cities and other local governments in Connecticut, Minnesota, Ohio, Rhode Island, West Virginia, and Wisconsin.[26]

It is probable that not all the statutes and ordinances, or the ways in which they are administered, would meet the tests of constitutionality summarized in an earlier section of this bulletin, but such objections do not go to the principle of the thing. The case law amply recognizes the general validity of punishments for those who distribute materials that fail to meet ordinary standards of what is not obscene. By the same token, however, the legislation does not have much impact upon the distribution of printed matter that is objectionable on some other basis than obscenity.

Other Pertinent Legislation

Since comic books are said by their numerous detractors to present stimula-

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23. Ill. Rev. Stat. (1955), ch. 38, secs. 468 and 469.
24. Ill. Rev. Stat. (1955), ch. 24, sec. 23--57.
25. Municipal Code of Chicago (1949), sec. 192--9.
26. For details of this local legislation consult the informative discussion, "Literature, the Law of Obscenity, and the Constitution," by William B. Lockhart and Robert C. McClure, 38 Minnesota Law Review (March, 1954), pp. 295ff.

tions to violence, crime, racial prejudice, Nordic imperialism, contempt for law and order and due process and the like, as well as to irregular manifestations of the sexual instincts, a search is accordingly on for legislation reaching all the alleged evils of comic books. To include in its scope such forms of expression, and only such forms of expression, as have deleterious consequences and no merits possessing or deserving constitutional protection is the basic problem already highlighted.

It was once thought that the laws banning material dealing predominantly with crime and violence would meet the need. These measures were on hand when comic books first made the headlines. For example, an Illinois law dating back to 1889 makes illegal and a criminal offense the selling or giving, or offering to sell or give, to a minor child of any printed matter principally made up of criminal news, police reports, or stories or pictures of deeds of bloodshed, lust, or crime. Such material may not, under the law, even be exhibited where a child may see it, nor may a minor child be employed to sell it.[27] An early criminal conviction under this act was affirmed by the state's Supreme Court without any issue of constitutionality entering into the opinion.[28] The terms of the statute are inclusive and specific enough that one could expect it to have been used widely in an effort to curb distribution of objectionable comic books. Moreover, its constitutional base is somewhat more solid than the invalidated New York law, discussed earlier, because its application is limited to those making sales or gifts to minors. Yet, serious doubts as to its constitutionality do exist and, moreover, the typical comic book on the borderline of offensiveness does not present as strong a violation of the statutory terms as a prosecutor might like to have. Much the same situation--a combination of at least doubtful constitutionality and uncertainty of the definition being broad enough to cover the case of all objectionable comic books--would seem to prevail in the score or more states that have enacted statutes directed against publications devoted to crime and the like regardless of the form such publications take.

Extent of Specific Legislation. So far as is known, the larger order of obviating these defects through enactments dealing more specifically with comic books, and in what the sponsors presumably deem a constitutional manner, has seen results in terms of legislative enactment in only one-third of the states. The barring of distribution, at least to minors, of the objected to items is the main feature of this legislation (12 states) with prohibitions of "tie in" sales being found in five of these states as well as four others that have been content to date with that sole specific reaction to comic books. Table 1 presents a listing of these states. So far as can be ascertained, no legislation of this nature was enacted prior to 1953 and the bulk of it seems to have come in the 1955 sessions of the several state legislatures. The recency of this legislation is testimony to the fact that a real testing of the utility and constitutionality of the approach taken has yet to come.

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27. Ill. Rev. Stat. (1955), ch. 38, secs. 106, 107, and 108.
28. Strohm v. People, 160 Ill. 582 (1896).

Table 1

State Legislation Aimed at Objectionable Comic Books

State	Distribution Banned		Punishments		Anti Tie-in Provisions Enacted
	To Minors	Outright	Criminal	Injunction	
Connecticut	X	-	X	-	-
Georgia	-	X	X	-	-
Idaho	-	-	-	-	X
ILLINOIS	-	-	-	-	X
Kentucky	X[a]	-	X	X	-
Maryland	X	-	X	-	-
Montana	X	-	X	-	-
Nevada	X[b]	-	-	-	-
New Jersey	-	-	-	-	X
New York	-	X	-	X	X
North Carolina	-	X	X	-	-
Ohio	X	-	X	-	X
Oklahoma	-	X	-	X	X
Oregon	-	-	-	-	X
Texas	-	X	X	-	X
Washington	-	X[c]	X	-	X
	6	6	9	3	9

a. The statute purports to ban even the publication and wholesale distribution, but this could be interpreted as meaning such publication, etc., as intended for minors.
b. Amendment to anti-obscenity statute contains an outright ban on distribution, but 1955 anti comic-book measure is apparently applicable only to distribution to minors.
c. Statute apparently bans all distribution of material likely to affect minors adversely.
Source: Statutes cited in Appendix A.

The Proscribed Books. A common note of all the statutes is a detailed description of the material which the legislation contemplates should have its distribution curtailed. This attempt at identification is the heart of the statutes (the major constitutional issues hinging upon the way in which it is handled) and has two elements: a delineation of the publications that customarily carry the kinds of material being acted against and a delineation of the content itself. Table 2 indicates

Table 2

Statutory Descriptions of Objectionable Comic Books
(For qualifications see accompanying text)

State	The Medium of Expression	The Material Prohibited
Connecticut	Book, pamphlet or magazine consisting of narrative material in pictorial form, colored or uncolored and commonly known as comic books.	Principally made up of pictures or accounts of methods of illicit sex, horror, terror, physical torture, crime, brutality or physical violence; [or which is] obscene, lewd, lascivious, filthy or indecent, or which consists of nude or partially denuded figures, posed or presented in a manner likely to provoke or arouse lust or passion in persons below the age of 18 or to exploit sex, lust or perversion for commercial gain.
Georgia	Book, pamphlet, paper, drawing, lithograph, engraving, photograph, or picture.	Offensive to the chastity or modesty, expressing or presenting to the mind or view something that purity and decency forbids to be exposed.
Kentucky	Any book, pamphlet or magazine consisting of narrative material in pictorial form, colored or uncolored, and commonly known as comic books.	The content of which is devoted to or principally made up of pictures or accounts of methods of crime, terror, physical torture, brutality or illicit sex.
Maryland	Book, pamphlet, magazine or other principal paper principally composed of pictures and specifically including but not limited to comic books.	Devoted to the publication and exploitation of actual or fictional deeds of violent bloodshed, lust, or immorality, or which, for a child below the age of 18, are obscene, lewd, lascivious, filthy, indecent or disgusting, and so presented as reasonably to tend to incite a child below the age of 18 to violence or depraved and immoral acts against the person.
Montana	Book, pamphlet, magazine, lewd picture, story paper, so-called comic book, or other printed, mimeographed or published matter.	Devoted to the publication or principally made up of criminal news, police reports or accounts of criminal deeds, or stories of lust and crime, or portraying sexually indecent conduct or subject matter, or portraying the planning or commission of deeds of crime, violence, horror, brutality, immorality or vice.
Nevada	Book, magazine, pamphlet, illustrated comic book (defined as including but not limited to publications where the text is not prominently featured, but rather is incidental to the picture, [cont'd on next page]	Obscene or indecent, or of indecent or immoral character. [This is the material banned as to distribution, and perhaps as to production, in the general anti-obscenity statute as amended.]

State	The Medium of Expression	The Material Prohibited
Nevada (cont'd)	being usually in the balloons that indicate the words spoken by the characters), writing, picture, photograph, or any article or instrument. [This is the description of the vehicle contained in the general anti-obscenity statute as amended.]	
	Illustrated comic book as defined above. [This is the description of the vehicle contained in the specifically anti-comic book portion of the 1955 act.]	Devoted to the publication, or largely made up of, or which when read as a whole is concerned with or depicts criminal news, police reports, accounts of criminal deeds, pictures, drawings, photographs, or stories of deeds of bloodshed, lust, or crimes as enumerated below, and as defined by the laws of this state and this act: abortion, administering poison, arson, assault, assault with intent to commit a crime, bribery of a public officer, burglary, carrying concealed weapons, counterfeiting, crimes against nature, dispensing unlawfully narcotic drugs, embezzlement, forgery, ghoulism and body snatching, incest, involuntary manslaughter, larceny, lewdness, malicious mischief, obtaining money by false pretenses, rape, robbery, selling liquor to minors, selling opium, voluntary manslaughter, kidnapping, and conspiracy or attempt to commit any of the foregoing offenses. [This is the material affected by the specifically anti-comic book portion of the 1955 act.]
New York	Book, magazine, pamphlet, comic book, story book, writing paper, drawing, photograph, figure or image or any written or printed matter.	Of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting or which contains an article of indecent or immoral use or purpose or purports to be for an indecent or immoral use or purpose.
North Carolina	Crime comic book or crime comic book publication.	Which through the medium of pictures portrays mayhem, acts of sex, or the use of narcotics.
Ohio	Printed or reproduced material in a newspaper, magazine, or in cartoon form commonly known as a "comic book" or "comic magazine."	Depicting any unlawful act of murder, killing, shooting, cutting, stabbing, or maiming of a person or any act of robbery, burglary, rape, seduction, incest, sodomy, prostitution, pandering, kidnapping, arson, forgery, counterfeiting, treason or use of narcotics, depicting acts of unusual cruelty, mass or extreme brutality, or acts which are obscene, advocating acts involving moral turpitude, or which is provocative of corrupt morals, crime, or juvenile delinquency. Material

[cont'd on next page]

State	The Medium of Expression	The Material Prohibited
Ohio (cont'd)		depicting biblical or historical events is expressly excluded.
Oklahoma	Book, magazine, pamphlet, comic book, story paper, newspaper, writing, paper pictures, drawing, photograph, figure, image or any written or printed matter.	Of indecent character which is obscene, lewd, lascivious, filthy, indecent or disgusting or which contains an article or instrument of indecent or immoral use or purports to be for an immoral or indecent use or purpose, or which depicts by pictures or printed matter fanciful deeds of crime or bloodshed tending to incite minors to violence, or depraved and immoral acts, or manifestly tends to the corruption of the morals of minors, or which manifestly tends to incite minors to disregard the laws of the land.
Texas	"Comic Book"--defined as any book, magazine or pamphlet or other publication wherein a story, narrative, theme, or other account is depicted or portrayed by words, and by the use of consecutive drawings, pictures, photographs, or other pictorial impressions, or any combinations thereof.	Depicting or portraying, or which contains advertising depicting or portraying nudity, indecent exposure of the person, or sexually suggestive posture, scenes, likenesses or activities [this is the statute's definition of a "lewd comic book."] Depicting sadism, any gruesome crime or any form of sexual perversion, or containing profanity, obscenity or filth [this is the statute's definition of a "depraved comic book."] Containing material designed to create sympathy for a criminal, promote distrust of law, teach methods of committing any crime, or material depicting evil triumphing over good, or scenes of excessive violence, or containing advertisements for the sale of nude pictures, sex instruction books, knives, guns, or gambling equipment [this is the statute's definition of a "corruptive comic book."]
Washington	"Comic book"--defined as any book, magazine or pamphlet. . . a major part of which consists of drawings depicting or telling a story or a real or fanciful event or series of events, with a substantial number of said drawings setting forth the spoken words of the characters with pointers or brackets or enclosures or by such other means as will plainly indicate the character speaking such words.	Which would appeal to or be likely to be read by or looked at by minors under the age of 18, which is obscene or indecent, or which is devoted to the publication or exploitation of fictional or actual deeds of violent bloodshed, lust or crime or immorality by characters depicted as either real or fanciful, human or inhuman, so massed as reasonably to tend to incite minors to violence or depraved and immoral acts against the person.

Source: Statutes cited in Appendix A.

the approaches that have thus far been used on these points, the language presented being either the exact wording of the laws or a close paraphrase.

Usually with actual mention of comic books, the statutes are made applicable to that type of material and tend not to be applicable to newspapers and books of more traditional form. However, this exclusion is not, and probably could not be, explicitly set forth in a way that would preclude all misunderstanding and still obtain the coverage desired. Reading matter regularly used in recognized religious, educational, and scientific institutions is specifically excluded in Georgia and Texas, while the former also specifically excludes movies, television, and federal and state publications.

As to the content that is proscribed, the statutes tend to be even more specific and to limit the ban to accounts and pictures that deal predominantly with themes of illicit sex, crime, violence and horror. In this respect, the newer statutes do not differ too greatly from the indeterminate type statutes of the type found invalid in the Winters case. Accordingly, it is the somewhat greater detail and the relationship to a particular format that is relied upon to overcome the Winters decision. It will be noted from the detailed tabular presentation that some of the statutes (e. g., New York) are not much broader than general obscenity laws or (e. g., North Carolina) extend to include portrayals of relatively few types of crime, but most states adopt a very wide view of what is undesirable. On another point--the possibility of the statute being tied in very directly with any tendency toward incitement to crime--the Maryland law is particularly noteworthy.

Many of the statutes are careful to exclude any possibility of application to the regular and general dissemination of crime news in newspapers and magazines. The Montana exclusionary clause is of particular interest because it seems to enter a plea of not guilty or a disclaimer of unconstitutional intentions in advance. Subsection (b) of the Montana statute reads as follows:

> The prohibitions and penalties imposed hereby shall not extend to publications within any constitutional guarantee of freedom of the press or freedom of religious worship, nor to publications privileged for medical instruction, privileged as official law enforcement bulletins or publications, nor to publications or reproductions of bona fide works of literature and the fine arts.

Findings of Fact. Several of the statutes contain declared findings of fact, and determinations or conclusions based thereon. These are apparently accepted as making some contribution toward the likelihood that the statutes will be found constitutional. The theory is that such findings evidence a situation in which use of the police power becomes reasonable. Thus, Kentucky declares that it is found that the defined types of "comic books and publications are a contributing factor to juvenile crime and a basic factor in impairing the ethical and moral development of our youth." The Maryland law finds a tremendous increase in the number and variety of harmful books (as the statute defines "harmful"); that many of these are so designed as to look like innocent types; that the objectionable publications are

often placed for sale side by side with the unobjectionable ones; that children below the age of 18 are so susceptible and impressionable that harmful comic books do or may incite them to commit certain crimes; that many publications of the general type described by the statute are deliberately calculated to horrify children and to instill unreasonable terror in their mind, and do or may produce such results; and that children form the major part of the market for such volumes. The Washington law speaks of the books impairing the moral and mental health of children as well as being detrimental to ethical development and being a contributing factor to juvenile delinquency and crime. The vetoed measure in the 1955 Illinois legislative session contained declarations along these same lines, and further incorporated a statement that the materials created "a clear and present danger to the people of this state." This last type of declaration, tying in with U. S. Supreme Court decisions recognizing limits on the right of freedom of expression, is also found as a suggestion for inclusion in a very recent Rhode Island report.[29]

Prohibited Distribution. A common note of all the statutes under discussion is the imposition of a ban on the distribution of those comic books that fall within the statutory terms. The 12 laws divide equally between those that basically prohibit only distribution among persons under a stated age and those that ban the distribution outright, so that even sales to adults are prohibited. Indications are that the more limited ban is believed to avoid some constitutional difficulties, since constitutional guarantees of freedom of the press are ordinarily thought of as having their chief application to writings for mature persons and since the state's police power is often thought of as encompassing specially broad powers to be used in the protection of children.

There is, in the statutes, a painstaking effort to be explicit about the kinds of distribution meant to be affected, and most of the laws are so worded as to reach just about every form of circulation. Montana, for example, makes unlawful, in connection with materials within the statute, selling, giving away, distributing, reselling, redistributing, showing, possessing with intent to do those things, and advertising or otherwise offering for loan, gift or distribution. This means, of course, that persons not ordinarily regarded as vendors of printed materials are subjected to the ban. The Kentucky law goes further than the others in that here possession by any person of six or more identical articles frowned on by the statute creates a legal presumption of an intent to violate the law. The Ohio law, at least, also has a reference to mere possession giving rise to prima facie evidence of one sort or another.

The Kentucky statute is also noteworthy in that it confronts constitutional problems more directly than might be expected with a reference to a legislative policy of restraining the publication of the types of materials deemed undesirable and later authorizes court action to enjoin publication as well as distribution or sale. It may be that the 1955 measure passed in Nevada is also to be interpreted

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29. Report of the Special Commission to Study "Comic" Books, Their Publication, Distribution, Etc., With Particular Reference to Effect Upon Minors (February, 1956).

as being broad enough to ban production as well as circulation because, in addition to the sections aimed at the circulation of certain material among minors, it includes an amendment to the general anti-obscenity statute adding a reference to illustrated comic books.

Another provision of some interest affecting distribution, found in the amended version of House Bill 754 of the 69th General Assembly session and occasionally in the statutes of other states, seems to be aimed at what might be called "schoolyard" or "intramural" circulation. Under this clause it is specifically made unlawful to hire, use, or employ any minor child to sell, give away, or in any manner distribute publications whose distribution generally is also forbidden by the anti comic-book legislation. Moreover, the clause makes it unlawful for anyone having the care, custody, or control of a minor child to permit such minor to engage in such distributive activity.

Enforcement Methods. Most of the statutes, and the vetoed Illinois measure, follow the practice of making the sale or distribution of objectionable comic books, as defined, punishable by relatively moderate sanctions of fine or imprisonment or both. This is true both of states forbidding distribution to minors and those forbidding it completely.

Special provisions for penalizing repeated offenses are quite common. In the Illinois proposal as introduced but not in final form and in the existing statutes of several states there is language to the general effect that each unlawful sale shall constitute a separate offense, though the transactions take place at the same time or within a short period of each other. Repeaters are subject to a higher scale of penalties than are first offenders in a number of states, including Montana and Washington, and it can be supposed that in additional states first offenders typically receive a sentence, perhaps a fine only, near the minimum of the statutory authorization while repeaters typically get sentences, including imprisonment, at somewhere higher up to the permitted scale of punishment. Vetoed House Bill 754 seemed to rely on this general supposition since no specially severe penalty was mandated for repeaters.

Among the states proceeding by way of ordinary criminal prosecutions, Georgia and Washington display significant variations in the enforcement machinery they employ. The Georgia action, not related in terms to comic books generally, involved creation of a three man State Literature Commission and clothing it with authority to investigate all sales of literature it has reason to suspect of being detrimental to the morals of Georgia citizens. If, after a public hearing, the commission finds any literature to be obscene, it is empowered to notify the seller or distributor of the same to withdraw the material from circulation. The commission, if its directive goes unheeded for 30 days, is authorized to recommend to the prosecuting attorney of the circuit where the material is being circulated that he prosecute the offender under the general anti-obscenity statute of Georgia. Although it appears as a matter of recent history that the Georgia enactment was a response to anti comic-book agitation and thus may with some justification be classed as specifically anti comic-book legislation, this language, when read in conjunction with the words

Georgia uses to define the material affected by the statute, does not seem to move that state appreciably beyond the older form of restriction.

If reports from Georgia are to be credited, the commission is not going about its work in blue-nosed fashion. It has made public its standards of judgment, which are: (1) the general and dominant theme of the writing; (2) sincerity of purpose; (3) literary or scientific worth; (4) channels employed for distribution; (5) contemporary attitudes of reasonable men toward the matter in question; (6) the type of reader expected to peruse the publication; (7) the publication's pornographic intent; (8) the impression the publication creates on the mind of the reader when read as a whole.[30] While the application of these criteria would probably result in the condemnation of comic books qualifying as obscene, the criteria themselves do not seem designed to have any reference at all to comic books that might be classed as objectionable on non-sexual grounds.

The Washington statute has attempted to make use of the licensing power as an enforcement technique, despite the prominence which that technique gives to constitutional objections on the score of prior censorship. In that state it is made unlawful and a criminal offense, not only to distribute the prohibited material, but to deal at wholesale or retail in any comic book likely to appeal to or be read by or looked at by a minor under the age of 18 without having a wholesaler's or retailer's license. It is also unlawful for one licensed as a wholesaler to sell comic books at retail, or for one licensed as a retailer to sell them at wholesale. Under the statute there is a prima facie presumption that all comic books fall into the category of those for the sale of which a license is required, and a mere statement that the comic books are not intended for juveniles does not suffice to overcome this presumption. The licensing authority is an officer known as the Supervisor of Children and Youth Services. He may refuse, suspend, or revoke a license upon a finding that the one against whom he is taking action has violated the statute by distributing prohibited material or has violated Washington's general anti-obscenity statute. He has the same powers with reference to applicants who appear to be the successors in interest of anyone whose license has been suspended or revoked or in whose businesses such persons have beneficial interests. There are the usual provisions for license fees, notice, hearing and judicial review. Whatever disciplinary measures the supervisor may take are in addition to the penalties imposed by the courts for violations of the statutory prohibition against the distribution of material that is offensive under the statutory definition.

New York and Oklahoma have chosen to enforce their statutes by way of injunction rather than direct criminal proceedings. In the former jurisdiction the injunction may be issued by the Supreme Court (a trial court in New York State); in the latter, by any court of record. The two statutes are practically identical in their other provisions, the most important of which are: that the action may be brought by the chief executive officer or prosecutor of any town or city, who is not liable for

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30. Edward L. Feder, Comic Book Regulation, (University of California at Berkeley, Bureau of Public Administration, 1955 Legislative Problems; no. 2).

costs or for damages in the event the action is unsuccessful and of whom bond is not required; that the defendant is entitled to trial within one day after the issues are joined; that judgment must be rendered within two days after the conclusion of the trial; that one who distributes or possesses with intent to distribute after he has been served with summons and has notice of the action is chargeable with knowledge of the material's contents; that the final decree of injunction must contain directions that the offending material be turned over to the sheriff of the county where the action is brought, and that the sheriff seize and destroy the same.

The penalty provisions of the 1956 Kentucky statute add two features of note: offenses against its terms are actionable either through criminal sanctions or injunctions, and possibly both, and the right to bring an action to enjoin violations is vested in any citizen as well as the usual public officials.

Provisions Against Tie-in-Sales. As Table 1 indicated, nine states are known to have sought to eliminate the practice whereby the wholesaler coerces or strongly influences the retailer to deal in objectionable materials, including comic book material, through a refusal to deliver items wanted by the dealer unless he accepts specified other items as well. In four of these states (Idaho, Illinois, New Jersey, and Oregon), this is the only type of legislation on the statute books that can be regarded as being quite specifically pointed at comic books; in the other five the so-called tie-in provision is either an integral part of the basic anti comic-book statute (Oklahoma, Texas, and Washington), or is found in a separate statute (New York and Ohio).

The essential provision of these laws, as already indicated, is that no retailer shall be required to deal in merchandise he does not want as a condition of obtaining a supply of merchandise he does want. In Oklahoma, Oregon, and New York the phraseology employed is to the effect that the retailer shall not be required to take material he reasonably believes to be offensive under the comic book statute. In Idaho, Illinois, New Jersey, and Washington the element of the dealer's reasonable belief is omitted, and the material he shall not be required to take is simply described in the language of the statute. The Texas enactment is a broad prohibition of any form of tie-in-sale. Violations are enjoinable or criminally punishable, as the case may be, in the same way as other infractions of the anti comic-book statutes in states where tie in sales prohibitions are not the only regulations of this general nature. They are minor criminal offenses in Illinois and the other three states where the anti tie-in legislation is the only statute.

Semi-Official Administrative Restrictive Action

Reference has earlier been made to the fact that various forms of quasi and semi-official action supplement clearly authorized action against offensive publications or tend to supply action where directly applicable statutes are entirely lacking. Some time before the comic book began to appear in newspaper headlines, police departments and various prosecuting attorneys had developed

a technique of blocking distribution of literature they judged obscene or otherwise undesirable through threats of a resort to prosecution under the anti-obscenity statutes. This technique has quite naturally been extended to the control of comic books, most frequently perhaps in Indiana, Massachusetts, Michigan, New Jersey, New York, and Ohio, though an early instance of it is reported from Peoria.

The essence of this informal type of restriction is that it operates alongside routine legal machinery and consists of a pretty strongly worded request to remove the offending material from circulation coupled with an expressed or thinly veiled threat of a resort to prosecution under the anti-obscenity statutes if the request for "co-operation" is not complied with. Although the premise of prosecution is rarely absent entirely, it is sometimes left in the background and the immediate emphasis put upon the possibility of "trouble" if the distributor or retailer does not go along. The "trouble" may include repeated visits by various city inspectors, police raids, a withdrawal of police protection, or an ostentatious stationing of policemen in the recalcitrant one's place of business.

Law enforcement officials and prosecutors have sometimes instituted this form of action on their own initiative and have sometimes been prodded into it by citizen groups. Even those officials who proceed on their own often call upon citizen groups for assistance, which takes the form of advance evaluation of the material by a citizens committee or its representatives. Probably the most prominent organization engaged in work of this preliminary and auxiliary nature is the National Organization for Decent Literature, which is said to operate under Catholic auspices. This body has published a standard or touchstone for the assessment of indecent material as follows: (1) publications which glorify crime and the criminal; (2) those whose contents are largely "sexy;" (3) those whose pictures and illustrations border on the indecent; (4) those which make a habit of carrying articles on "illicit love;" (5) those which carry disreputable advertising. Comic books are not, of course, the only medium to which these measuring rods are applied.

The police have admitted that they favor this method because of its effectiveness, and most observers agree with them that it is indeed effective. It bears down primarily upon the man in the most exposed position, the one who has the most to lose if he shows fight, that is, the retail book or magazine seller. The annoyance and unfavorable publicity that inevitably result from a defiance of police guidance or directives in this matter make even final vindication by a court a costly triumph. The public does not pay over much attention to the constitutional issues involved but is apt to remember the retail dealer as the man who insisted on staying in the business of peddling harmful literature to the children of the community. As a result of these factors, compliance with police "hints" has so much been the rule rather than the exception that the real problems in this area relate to how straight-laced the standards should be and whether any real threat to personal liberty is involved.

If a more formalized type of administrative control, though still basically extra-legal, is desired, attention may profitably be drawn to the system in vogue in Detroit and Wayne County. The Detroit Police Department maintains a "license and

censor bureau" which evaluates literature, comic books included, offered for sale in the Motor City. The practice is for local distributors to submit, in advance of distribution, copies or paper bound books for review by policemen assigned to the license and censor bureau. If an officer's finding that material is obscene is concurred in after an independent review, first by the head of the bureau and then by the Wayne County Prosecutor, the latter prepares a letter to that effect, which the bureau head transmits to the distributor. The letter contains the prosecutor's statement that he finds the material to be in violation of the Michigan anti-obscenity statutes. Monthly lists of all publications found by the prosecutor to be in this position are mailed to all local distributors. There is another list, this one of "partially objectionable" books and publications that are not clearly in violation of the statutes. As to these, the distributors are warned that, if a complaint is received, the publication must be removed from circulation. As a courtesy, the lists are forwarded to the police of 17 or 18 other Michigan municipalities for such use as they see fit to make of them. Occasionally requests for the lists from police chiefs in cities outside Michigan are honored. The police chief of Youngstown, Ohio, is reported to have secured both Detroit lists and to have used them without making the Michigan distinction between those totally and those only partially objectionable.[31]

Possible Solutions to the Constitutional Problem

The continued introduction of bills unfriendly to many types of comic books is in itself evidence that the movement to legislate on the subject has not lost its force. In states currently lacking this type of legislation the effort is to find a constitutional and otherwise acceptable approach; in states already having legislation on the subject, it is improvement of the legislation to meet constitutional and administrative problems that is the motivation. At the federal level, the suggestions that are of interest to the states are the possibilities of denying mailing privileges or entry into interstate commerce to carefully defined objectionable materials, as has been done with regard to obscene items.

The recency of most state legislation dealing specifically with comic books, and the consequent lack of a full judicial testing of the constitutional validity of these laws, makes it hazardous to either affirm or deny the possibility that a valid prohibitory statute can be drafted. Certainly, however, past decisions of the federal and state courts have indicated that it is no simple matter to formulate a valid statute where infringement of freedom of the press, or expression generally, is involved even though for the purpose of serving the general welfare. While the right of freedom of expression is not absolute, court-approved limitations have been few. One cannot assert a constitutional right to create a panic by yelling an alarm when no occasion for the alarm exists nor can the constitutional guarantee be successfully

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31. For fuller treatment of these systems of informal control see: "Censorship of Obscene Literature by Informal Governmental Action," 22 University of Chicago Law Review (Autumn, 1954), pp. 216ff.

asserted, it would seem, as a basis for ignoring rules promulgated out of military necessity or to safeguard traffic, nor--to get closer to the problem--do constitutional guarantees invalidate laws against obscenity. Yet, the right to publish or otherwise speak one's mind freely is guaranteed against most infringements and prior restraint is likely to be held invalid even when some form of post-publication punishment for the same act might be upheld.

With respect to comic books, these doctrines would seem to preclude such methods of control as the prevention of future publication without advance approval, the enjoining of all future publication, and the requirement of previous compliance with specific conditions imposed by legislative act.[32] It may also be noted that the lack of intrinsic value in comic books does not in itself deprive them of constitutional protection. Publications of no particular literary, philosophical, or scientific value, which neither damage the state nor contribute anything of moment to its advancement, are protected by the great guarantees of free expression just as much as serious works are. Only such of these books as a reasonable man might conclude would cause serious social damage can conceivably be brought within statutory bans.

The specific issue thus becomes one of whether any types of comic books are in fact such a menace to society that they deserve to rank with obscene materials as removed from constitutional protection. If so, there is still the necessity of finding apt words in which to differentiate these from other comic books and other forms of literature so that over-zealous enforcement will not mean an undue threat to legitimate forms of expression. In the past, such efforts have come to grief on the score that the definition of items which a court might, at least reluctantly, allow to be banned was broad enough to include the great classics let alone many works whose merits were of debatable value. Where this is true, there is the additional objection that a writer or publisher is not put on proper notice regarding what conduct is actually prohibited by the law.

Recent legislation on this subject in other states has rested on the theory that some description of format and contents of the types of publications deemed to make a contribution to juvenile delinquency and crime may be enough to cure the constitutional defects that the courts found in earlier attempts. This, however, is by no means a sure approach unless court pronouncements shift in the direction of the view held by the minority when a New York "crime and violence" book prohibition was under scrutiny.

It would seem, therefore, that the search for a more certain approach is likely to continue without abatement for some time to come. One recent suggestion for an additional safeguard against constitutional objections is that the restrictive statute, in addition to defining the offending material as clearly as practicable, make the distribution criminal only if the violator has a specific intent to do the

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32. See an informative discussion by Thomas I. Emmerson, "The Doctrine of Prior Restraint," in 20 Law and Contemporary Problems, (Autumn, 1955), pp. 648ff.

harm caused by objectionable comic books or a knowledge that his publishing and distributing such material is exactly what is prohibited under the statute. A specific intent to induce youngsters to act immorally or to commit crimes against the persons of others could rarely, if ever, be proven up, but an awareness on the offender's part that his material would have a harmful effect as the legislature sees it, coupled with a reckless decision to publish or distribute it anyway, without alteration, would probably establish a guilty knowledge sufficient to convict if the law is otherwise valid.[33] The legislative finding in the existing Maryland statute to the effect that publishers and distributors deliberately aim at the mass market of child readers with material they design with an eye to its shock content, seems to be based upon this suggestion, although that finding is not rephrased in the charging part of the act as an essential element of the offense.

If, in fact, this or a similar approach would provide a basis for a valid limitation upon some of the more offensive types of comic books, subsidiary problems would not be particularly acute. A publication found on the newsstands or elsewhere in violation of a law, here assumed to be valid, could be made subject to seizure under procedures long established with regard to obscene materials and perhaps even mere possession as well as attempts at distribution could be punished. If the circumstance that the items may be published in another state is deemed troublesome, there could presumably be a statutory adaptation of the rule applied to other activities that one doing business in Illinois is deemed to have appointed some state official as his agent for the serving of process. Even if objections to such substituted service might arise if a criminal proceeding were the goal, the procedure would still seem adaptable to actions in which the main purpose is a declaration that the statute has been violated, after which withdrawal of the offending item could be expected to take place as a matter of course. The crux of the whole problem, then, and as has been amply indicated, is whether there is in fact a constitutional basis for saying that comic books of the offensive types are a recognizable social evil and then finding a basis for describing them and the actions prohibited in terms that the courts will accept.

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33. See note, "Crime Comics and the Constitution," 76 Stanford Law Review, (March, 1955), pp. 237-260.

APPENDIX A

Statutory Citations to "Comic Book" Laws

Gen. Stat. of Conn. (1955 supp.), sec. 3293d.

Laws of Ga. (1953), pp. 135ff.

Idaho Code (1955 cum. supp.), ch. 48, secs. 118 and 119.

Ill. Rev. Stat. (1955), ch. 38, sec. 472a.

Kentucky, House Bill 86 (1956).

Ann. Code of Md. (1955 supp.), art. 27, secs. 516A through 516F.

Rev. Code of Mont. Ann. (1955 cum. supp.), sec. 94--3601 and sec. 94--3602.

Statutes of Nevada (1954-55), c. 435.

Rev. Stat. of N. J. (1954 cum. supp.), Title 2A, ch. 115, sec. 3.1.

Dennis' Criminal Code and Penal Law (N. Y. Code of Criminal Procedure, 1955 cum. supp.), sec. 22a.

Gen. Stat. of N. C. (1955 cum. supp.), sec. 14--189.

Baldwin's Ohio Rev. Code Service (1955), secs. 2903.10 and 2905.341.

Okla. Laws (1955), pp. 112-113.

Oregon Laws (1955), ch. 494.

Vernon's Texas Penal Code (1955 supp.), art. 527b.

Rev. Code of Wash. (1955 cum. supp.) secs. 19.18.010 through 19.18.900.